IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION Nos. 1716 to 1727 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AHIR KARSHAN KARA & 11 - Petitioner(s)
Versus
STATE OF GUJARAT THR' SECRETARY & 2 - Respondent(s)

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Appearance :
MR GM JOSHI for Petitioners
Mr.J.K.Shah,learned Assistant Government Pleader for the respondents in Special Civil Application Nos.1716 to 1722 of 2007.

Mr.Pathik Acharya,learned Assistant Government Pleader for the respondents in Special Civil Application Nos.1723 to 1727 of 2007.

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL

and

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 28/06/2007

COMMON ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

1. Leave to amend the cause title of each petition is granted. The Deputy Collector and Special Land Acquisition Officer, Khambhaliya is permitted to be impleaded as respondent No.4 in each petition.

2. Rule. Mr.J.K.Shah, learned Assistant Government Pleader, waives service of notice on behalf of the respondents in each petition. Having regard to the facts of the case, the petitions are taken up for final disposal today.

3. By filing the instant petitions under Article 226 of the Constitution, 12 petitioners, whose lands were used for the purpose of construction of Bhogat Bandhara Dam without following the procedure contemplated by the provisions of the Land Acquisition Act, 1894 (“the Act” for short) have

prayed to issue a writ of mandamus or any other appropriate writ or order directing the respondents to initiate land acquisition proceedings as prescribed under the Act for acquiring their lands and pay compensation to them in accordance with law. The petitioners have further prayed to issue an appropriate writ directing the respondents to fix the compensation for non-use of their lands since 1997 till the notification, which may be published under section 4 of the Act and pay necessary compensation to them.

4. The petitioners are owners of different Survey numbers situated at village Gojinesh, Taluka Kalyanpur, District Jamnagar. The competent authority addressed a letter dated October 3, 1997 to the petitioners calling upon them to hand over possession of their lands as the lands were likely to be needed for the public purpose of construction of Bhogat Bandhara Dam. The case of the petitioners is that in view of negotiations which had taken place between the petitioners and the competent authority, they had handed over possession of their lands to the Government. The petitioners, thereafter, demanded compensation by addressing a letter dated June 27,

2001, a copy of which is produced at page 20 of the petition. After a long time, letters dated January 27,2006 were addressed to the petitioner No.7 calling upon him to take appropriate steps for the purpose of measurement of the land. The copies of those letters are produced on pages 66 and 67 of the petition. The grievance made by the petitioners in the instant petitions is that the lands handed over by them to the Government for the purpose of construction of Bhogat Bandhara Dam are totally sub-merged and, therefore, it is not possible for them to take steps for measuring the lands in question. The petitioners have mentioned that their lands were used for the construction of Dam without following the procedure contemplated under the Act. As the respondents have not initiated proceedings for acquiring the lands of the petitioners nor paid compensation to them, the petitioners have filed the instant petitions and claimed reliefs, to which reference is made earlier.

5. The instant petitions were placed for preliminary hearing before the Court on January 18,2007 and after hearing the learned counsels for the parties, notice was ordered to be issued to the respondents. On service of notice Mr. G.P. Khara,

Deputy Executive Engineer, Salinity Control Sub-Division, Jam Khambhaliya, Jamnagar has filed affidavit in reply to the petition wherein it is mentioned inter alia that the supplementary proposal to acquire lands of 16 farmers was prepared and sent to the District Land Record Officer for joint measurement in February 2002, pursuant to which joint measurement of the land was carried out in March 2002 and a measurement sheet was also prepared after which, necessary proposal was made to the Land Acquisition Officer in June 2005. It is further mentioned in the reply that the Land Acquisition officer returned the proposal in August 2005 with instructions to submit the proposal after considering the sub-plotting of the lands belonging to the farmers.

6. This Court has heard the learned counsels for the parties. Mr.J.K.Shah, learned Assistant Government Pleader, has informed the Court that the petitioners were called upon to give measurement of their respective lands so as to enable the respondents to specify the same in the Notification and declaration to be made under the Act, which would enable the competent authority to determine the

amount of compensation payable to the petitioner concerned.

7. Mr.G.M.Joshi, learned counsel for the petitioners, states at the Bar that by addressing notices dated January 23, 2007, the petitioner Nos.1,3 and 9 have been informed by Deputy Executive Engineer, Salinity Control Sub-Division, Jam Khambhaliya, Jamnagar that it is not necessary for them to furnish any particulars relating to the measurement of their lands used for the purpose of construction of the Dam as entire lands were used for the purpose of construction of the Dam. In support of this statement, the learned counsel has produced xerox copy of the notices dated January 23,2007 for perusal of the Court. The same are ordered to be taken on record of the petition.

8. Mr.G.M.Joshi, learned counsel for the petitioners, further states that rest of the petitioners have been called upon to furnish particulars regarding the measurement of their respective land used for the purpose of construction of the Dam as only part of the Survey numbers concerned is sub-merged. In support of this claim

also the learned counsel has produced notices for perusal of the Court which are also ordered to be taken on record of the petition.

9. Mr.G.M.Joshi, learned counsel for the petitioners, on instructions of the petitioners, states at the Bar that necessary particulars regarding measurement of the lands used for the purpose of construction of Dam shall be furnished by the petitioners except the petitioners No.1,3 and 9 to the Deputy Executive Engineer, Salinity Control Sub-Division, Jam Khambhaliya, Jamnagar within a period of three weeks from today.

10. In view of the above state of affairs, this Court is of the opinion that interest of justice would be served, if the respondents are directed to initiate proceedings for acquiring the lands in question after necessary particulars are supplied by the petitioners concerned regarding measurement of the lands used for the purpose of construction of Dam.

11. For the foregoing reasons, the petitions partly succeed. Except petitioner Nos.1,3 and 9, the other

petitioners are hereby directed to furnish particulars regarding the measurement of their lands used for the purpose of construction of the Dam in question to the Deputy Executive Engineer, Salinity Control Sub-Division, Jam Khambhaliya, Jamnagar within three weeks from today. If the particulars of measurement of the lands used by the respondents, as mentioned above, are furnished by the petitioners to the Deputy Executive Engineer, Salinity Control Sub-Division, Jam Khambhaliya, Jamnagar within the time stipulated by the court in this order, the Deputy Executive Engineer, Salinity Control Sub-Division, Jam Khambhaliya, shall forward the proposal to the Land Acquisition Officer as early as possible and latest within two weeks from the date of receipt of necessary particulars from the petitioners. On receipt of the proposal from the Deputy Executive Engineer, Salinity Control Sub-Division, Jam Khambhaliya, the respondent No.4 i.e. Deputy Collector and Special Land Acquisition Officer, Khambhaliya shall move the State Government immediately and latest within three weeks from the date of receipt of the proposal, for issuance of Notification under Section 4(1) of the Act in the Official Gazette. The respondent No.1 is directed to

issue and publish Notification under Section 4(1) of the Act immediately, but latest within two weeks from the date of receipt of proposal from the Deputy Collector and Special Land Acquisition Officer, Khambhaliya. On publication of Notification, which may be issued under Section 4(1) of the Act, necessary inquiry under Section 5A2 of the Act shall be completed by the Special Land Acquisition Officer, as early as possible and preferably within four weeks after which necessary report shall be forwarded to the State Government as contemplated by Section 5A2 of the Act so as to enable the State Government to make a declaration as contemplated by Section 6 of the Act. The State Government is hereby directed to make declaration under Section 6 of the Act as early as possible and latest within three weeks from the date of receipt of report under Section 5A2 of the Act in the Official Gazette. On publication of declaration, which may be made under Section 6 of the Act, necessary notices shall be issued to the interested persons i.e. the petitioners for payment of compensation payable to them as early as possible and latest within four weeks from the date of publication of declaration made under Section 6 of the Act. The respondent No.4 i.e. the Deputy

Collector and Special Land Acquisition Officer, Khambhaliya is hereby directed to make award as contemplated by Section 11 of the Act, within two months thereafter and make payment of compensation payable to the petitioners as early as possible and preferably within two months from the date of the award.

12. Subject to above referred to directions, rule is made absolute in each petition. There shall be no orders as to costs. Direct service is permitted.

(J.M.Panchal,J)

(Smt.Abhilasha Kumari,J)

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